

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

Illinois Commerce Commission	:	
On its own motion	:	
	:	
v.	:	
	:	
Illinois Bell Telephone Company	:	01-0609
	:	
Investigation of the propriety of the rates,	:	
terms, and conditions related to the provision	:	
of the Basic COPTS Port and the	:	
COPTS-Coin Line Port.	:	

ORDER FOR INTERIM RATES AND COMMENCING RATE PROCEEDING

On September 10, 2001, Illinois Bell Telephone Company ("Ameritech Illinois") filed with the Commission a Verified Petition for Special Permission in Docket 01-0588 ("Petition"). The Petition requested special permission to place into effect on less than 45 days' notice certain tariff provisions, which it called the "Payphone Port Tariff," pursuant to Section 9-201(a) of the Public Utilities Act ("Act"). Attached to the Petition were tariff sheets that Ameritech Illinois described as introducing a new unbundled local switching basic coin operated pay telephone services ("COPTS") line port, and as adding flexible automatic number identification ("Flex ANI") to the existing COPTS-Coin line port. The Petition asserted Ameritech Illinois's belief that the offerings set forth in the Payphone Port Tariff are just and reasonable, but that based on discussions with interested CLECs, Ameritech Illinois also believed that CLECs might object to certain aspects of the proposed rates. The Petition noted that any such objections should not be permitted to delay the effectiveness of the offerings and that the Commission has the authority to set interim rates for such offerings, pursuant to a petition or on the Commission's own motion, citing Section 13-801(g) of the Act.

Following Ameritech Illinois's filing of the Petition, Data Net Systems, LLC, TruComm Corporation, and Payphone Services, Inc. (hereinafter "Petitioners") filed a document in Docket No. 01-0588 entitled "Verified Petition to Set an Interim Rate Pursuant to Section 13-801(g)," citing the same provision of the Act ("Interim Rate Petition"). The Interim Rate Petitioner contained a request (1) that the Commission set an interim monthly recurring rate for the proposed Basic COPTS Line Port at the Basic Line Port monthly rate and for the proposed COPTS-Coin Line Port at the Ground Start Line Port monthly rate, each subject to change pursuant to the Commission's orders, including the Commission's order in ICC Docket No. 00-0700, (2) that the Commission permit the Proposed Tariff to go into effect subject to an investigation of the rates, terms, and conditions of the tariffs proposed by Ameritech Illinois pursuant to Section 9-201 of the Act, and (3) that the Commission specifically note that in such investigation Ameritech Illinois shall have the burden to establish the justness and reasonableness of the rates, terms, and conditions of the Payphone Port Tariff.

The Ameritech Illinois Tariff Filing

As noted above, Ameritech Illinois described the tariff language it filed with the Commission on September 10, 2001, as introducing a new unbundled local switching basic coin operated pay telephone services ("COPTS") line port, and as adding flexible automatic number identification to the existing COPTS-Coin line port.

Ameritech Illinois tariffs in place as of September 10, 2001, listed a Basic Line Port at a monthly recurring rate of \$5.01, the interim cost based switch rate as determined by the Commission in ICC Docket Nos. 96-0486/0569 (February 17, 1998 Order). However, Ameritech Illinois's Payphone Port Tariff sets forth a new rate of \$7.20 for the Basic COPTS Port, and a new rate of \$7.97 for the COPTS -Coin Line Port. The Basic COPTS Port rate reflected in the Payphone Port Tariff is \$2.19 more than the cost-based rate previously set by the Commission, and the COPTS-Coin Line Port rate is \$2.19 more than the rate listed in Ameritech Illinois's tariff as of September 10, 2001.

On September 18, 2001, the Commission granted special permission for the Payphone Port Tariff to take effect on less than 45 days' notice.

Severance of Issues and Creation of New Docketed Proceeding

On September 11, 2001, Ameritech Illinois filed a pleading entitled "Illinois Bell Telephone Company's Response to Petition to Set Interim Rate" ("Response"). The Response states that Ameritech Illinois does not agree with the arguments in the Interim Rate Petition. The Response further states that in an effort to expedite the resolution of the Interim Rate Petition and the offering of services to be provided through Ameritech Illinois' Payphone Port Tariff, Ameritech Illinois "declines to respond to the [Interim Rate] Petition at this time." The Response states that by declining to respond, Ameritech Illinois does not waive any arguments it may make in the future, but instead expressly reserves all such arguments for the Commission's investigation into permanent rates for the Payphone Port Tariff.

The Commission is of the opinion that the issues identified in the Interim Rate Petition and Response are appropriate for formal consideration by the Commission in the context of this Order for Interim Rates, and the proceeding which will flow from it, as is more fully described below. These issues are, however, sufficiently different from the issue of whether good cause exists to allow the filing of the Payphone Port Tariff on less than 45 days' notice that both sets of issues cannot conveniently be disposed of in Docket No. 01-0588. Pursuant to Section 200.600 of the Rules of Practice, the Commission therefore orders the creation of a separate proceeding, into the record of which will be placed the Interim Rate Petition and the Response.

Interim Rate Petition

Petitioners object to the rates in the Payphone Port Tariff. Petitioners contend that Section 13-801(g) requires cost-based rates and that there is no cost justification for Ameritech Illinois to add a \$2.19 rate to the existing Basic Line Port rates or to the

existing rates for the COPTS-Coin Line Port. Based on information and belief, the Petitioners allege that Ameritech Illinois has increased the rates by \$2.19 over the already tariffed rates to be charged for the provision of Flex ANI from the switch. Petitioners assert that such an increase in the rates would allow Ameritech Illinois to recover costs that have already been recovered, or in the alternative to recover costs that Ameritech Illinois is not permitted to recover. In support of their argument, the Petitioners point to Federal Communications Commission ("FCC") orders which addressed the provisioning of flex ANI for all incumbent local exchange carriers.

Petitioners state that on September 20, 1996, and November 8, 1996, the FCC ordered Ameritech Illinois to provide payphone specific coding digits from its switches for calls originating from payphones. *In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, CC Docket 96-128. They further state that through orders entered on October 7, 1997, and March 9, 1998, the Common Carrier Bureau extended until June 8, 1998, the time for Ameritech Illinois to install Flex ANI software on its switches to meet the coding digits requirement (collectively "Payphone Orders"), and that the March 9, 1998, order authorized Ameritech Illinois and other ILECs "to recover from PSPs [Payphone Service Providers] their incremental costs of providing payphone-specific coding digits [Flex ANI] for purposes of enabling PSP calls to be identified by IXC's to pay compensation for each and every completed intrastate and interstate telephone call made using a payphone that is not otherwise compensated," citing the Payphone Order dated March 9, 1998, Paragraph 40. Petitioners state that the FCC also allowed Ameritech Illinois to propose reasonable recovery periods when it filed its tariffs for Flex ANI cost recovery from the PSPs, citing *Id.* at footnote 127.

The Petitioners point out that, on or about March 31, 1998, Ameritech Illinois filed a federal tariff that imposed a charge on PSPs for a period of 24 months to recover the costs of implementing Flex ANI in the Ameritech Illinois switches. Moreover, the Petitioners argue that Ameritech Illinois has known since this Commission's order in ICC Docket Nos. 95-0458/0531, entered June 26, 1996, and confirmed in the Commission's order in ICC Docket Nos. 96-0486/0569, entered February 17, 1998, both entered before the March 9, 1998, order in CC Docket 96-128 and before the Ameritech Illinois filing of its federal tariff to recover the costs from the PSPs for Flex ANI implementation in the Ameritech Illinois switches, that under Illinois law Ameritech Illinois is obliged to provide the switch to requesting carriers with all of the features and functionalities of the switch. Petitioner state that Ameritech Illinois has either already recovered the costs for Flex ANI implementation or has already had the opportunity to recover the costs under the FCC orders, and that in either event, there is no cost justification for an additional \$2.19 recurring monthly rate element to CLECs sought in Ameritech Illinois's Payphone Port Tariff.

Petitioners object to the rate of the switching network element offered by Ameritech Illinois, but argue that it would promote competition and be in the public interest for the Commission to set an interim network element switching rate for the Basic COPTS Port set equal to cost-based rate for the Basic Line Port, currently \$5.01, and to set an interim rate for the COPTS-Coin Line Port set equal to the rate for the Ground Start Line Port, currently \$5.78, and allow the Proposed Tariff to go into effect

with such Commission-set interim rates¹. Furthermore, the Petitioners request that the Commission initiate an investigation of the Payphone Port Tariff and confirm that Ameritech Illinois has the burden of proof to establish the justness and reasonableness of the rates, terms, and conditions of the Payphone Port Tariff. So that other carriers can provide services covered by the terms of the Payphone Port Tariff, the Petitioners request that the Commission adopt on the above interim rates until the cost based rate determination is made, or the interim rate is modified, by the Commission.

Ameritech Illinois's Response

As noted above, Ameritech Illinois indicated in its September 12, 2001 Response that, in an effort to expedite the resolution of Petitioners' request for an interim rate, it would not respond to their Petition, but instead would address their arguments in the context of the Commission's investigation regarding a permanent rate. Ameritech Illinois indicated that, by declining to respond at this time, it was not waiving any arguments it might make in the future.

Commission Analysis and Conclusion

The General Assembly has, as of June 30, 2001, specifically addressed the need for expedited Commission action with regard to developing cost based rates for interconnection, collocation, network elements, and operations support systems. The General Assembly has specifically empowered this Commission to adopt interim rates either upon the petition of an interested party or upon our own motion.

Section 13-801(g) of the Act reads as follows:

(g) Cost based rates. Interconnection, collocation, network elements, and operations support systems shall be provided by the incumbent local exchange carrier to requesting telecommunications carriers at cost based rates. The immediate implementation and provisioning of interconnection, collocation, network elements, and operations support systems shall not be delayed due to any lack of determination by the Commission as to the cost based rates. When cost based rates have not been established, within 30 days after the filing of a petition for the setting of interim rates, or after the Commission's own motion, the Commission shall provide for interim rates that shall remain in full force and effect until the cost based rate determination is made, or the interim rate is modified, by the Commission.

220 ILCS 5/13-801(g).

We find that the Petition to set an Interim Rate for Pursuant to Section 13-801(g) raises important points that require Commission attention. Petitioners consent to permitting Ameritech Illinois's Proposed Tariff to go into effect subject to the Commission setting interim rates pursuant to Section 13-801(g) and to the Commission opening an investigation of the Proposed Tariff pursuant to the provisions of Article IX

¹ The rate structure for Ameritech Illinois's port charges is the subject of Docket No. 00-0700, which is currently pending before this Commission.

of the Act requiring Ameritech Illinois to establish the justness and reasonableness of the proposed rates, terms, and conditions. We note that Ameritech Illinois has indicated that while it does not agree with the arguments in the Interim Rate Petition, it has declined to respond at this time, does not waive any arguments it may make in the future, and reserves all such arguments for the Commission's investigation into permanent rates for the Payphone Port Tariff.

Therefore, we grant the Petition to set an Interim Rate pursuant to Section 13-801(g) and further order that Ameritech Illinois's Payphone Port Tariff be immediately amended to provide a monthly price of \$5.01 for Basic COPTS Port, per port, and a monthly price of \$5.78 for COPTS-Coin Line Port, per port. The Payphone Port Tariff shall otherwise be allowed to remain in effect subject to the Commission's ratemaking authority under the Act, and to the investigation initiated here on the Commission's own motion under Article IX of the Act, in which investigation Ameritech Illinois shall have the burden to establish the justness and reasonableness of the proposed rates, terms, and conditions of its Payphone Part Tariff.

The Commission, having considered the entire record and being fully advised in the premises, is of the opinion and finds that:

- (1) Data Net Systems, LLC, TruComm Corporation and Payphone Services, Inc. are all authorized to provide resold and facilities-based local and interexchange telecommunications services in Illinois throughout the state of Illinois and each are telecommunications carriers within the meaning of Section 13-202 of the Act;
- (2) Illinois Bell Telephone Company ("Ameritech Illinois") is an incumbent local exchange carrier ("ILEC"), authorized to provide local and intraMSA interexchange telecommunications services in Illinois within its designated service territory;
- (3) The Commission has jurisdiction over the parties to this proceeding, which are named in finding paragraphs (1) and (2), and over the subject matter herein;
- (4) The Petition to set an Interim Rate pursuant to Section 13-801(g) should be granted in full;
- (5) The interim recurring monthly rate for Ameritech Illinois's proposed Basic COPTS Port shall be the same as the Basic Line Port, currently \$5.01 per month, and subject to any change in the Basic Line Port rate pursuant to the Commission's orders;
- (6) The interim recurring monthly rate for Ameritech Illinois's proposed COPTS-Coin Line Port shall be the same as the Ground Start Line Port, currently \$5.78 per month, and subject to any change in the Ground Start Line Port rate pursuant to the Commission's orders;

- (7) Ameritech Illinois's Payphone Port Tariff shall otherwise be allowed to remain in effect subject to the above interim rates set by the Commission under Section 13-801(g) of the Act;
- (8) This Commission should enter into a proceeding, as described in the prefatory portion of this Order, to investigate the propriety of the rates, terms, and conditions of Ameritech Illinois's Payphone Port Tariff under Article IX of the Act; and
- (9) In such investigation, Ameritech Illinois shall bear the burden of proving the justness and reasonableness of the proposed rates, terms, and conditions in its Proposed Tariff under the Public Utilities Act.

IT IS THEREFORE ORDERED that the Petitioner's Petition to set an Interim Rate pursuant to Section 13-801(g) is granted in full.

IT IS FURTHER ORDERED that this Commission hereby enters into an investigation of the propriety of the Payphone Port Tariff rates, terms, and conditions under Article IX of the Act.

IT IS FURTHER ORDERED Ameritech Illinois shall bear the burden of establishing the justness and reasonableness of the rates, terms, and conditions in its Payphone Port Tariff under the Public Utilities Act.

IT IS FURTHER ORDERED, that the interim recurring monthly rate for Ameritech Illinois's proposed Basic COPTS Port shall be the same as the Basic Line Port, currently \$5.01 per month, and subject to any change in the Basic Line Port rate pursuant to the Commission's orders.

IT IS FURTHER ORDERED that the interim recurring monthly rate for Ameritech Illinois's proposed COPTS-Coin Line Port shall be the same as the Ground Start Line Port, currently \$5.78 per month, and subject to any change in the Ground Start Line Port rate pursuant to the Commission's orders.

IT IS FURTHER ORDERED that this Order is not final and is not subject to the Administrative Review Law.

By Order of the Commission this 25th day of September, 2001.

Chairman